

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Friends of Maurice Hinchey and) MUR 4843
Frank Koenig, as Treasurer)
)

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by John Hicks, Chairman of the Orange County Republican Committee. See 2 U.S.C. § 437g(a)(1). The Commission found reason to believe that Friends of Maurice Hinchey and Frank Koenig, as treasurer, violated 2 U.S.C. §§ 441b and 441f and 11 C.F.R. § 103.3b.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

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1. Friend of Maurice Hinchey Committee ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and is the authorized campaign committee of Maurice Hinchey.

2. Frank Koenig is the treasurer of the Committee.

3. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits knowingly accepting a contribution made in the name of another. 2 U.S.C. § 441f.

4. Under the Act, a corporation may not make contributions in connection with the election of a candidate for federal office, and a political committee may not knowingly accept or receive a corporate contribution. 2 U.S.C. § 441b(a).

5. If the treasurer of a political committee determines that at the time a contribution was received and deposited, it did not appear to be made in the name of another or exceed contribution limits, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution within thirty days of the date on which the illegality was discovered. 11 C.F.R. § 103.3(b)(2).

6. On March 21, 1997, Ansaldo North America, Inc. ("Ansaldo") pleaded guilty to two misdemeanor counts of violating the Act in connection with \$43,000 in illegal contributions that it indirectly made to the Committee during the 1992 campaign.

7. As part of its plea, Ansaldo also admitted that, acting at the request of Michael Zinn, President and CEO of Besicorp, and through its Ansaldo Industria of America, Inc. subsidiary, it reimbursed individual employees of Ansaldo Industria of America, Inc. for \$3000 in contributions they sent to Mr. Hinchey's campaign.

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8. As of at least March 21, 1997, the Committee should have known that it had received at least \$3,000 in illegal contributions from Ansaldo.

9. On May 15, 1997, Besicorp and its President, Chief Executive Officer and majority shareholder Michael F. Zinn were indicted on charges that they had conspired to defraud the United States and the Commission in connection with enforcement of the Act, and also to have caused the Committee to make false statements on disclosure reports filed with the Commission.

10. The indictment also alleged that Zinn and Besicorp reimbursed various Besicorp employees, relatives of Besicorp employees and an employee of another company controlled by Zinn for \$27,000 in campaign contributions to the Committee.

11. The indictment further alleged that Mr. Zinn solicited an officer of an Ansaldo subsidiary to cause his employees to make contributions to the Hinchey campaign and to reimburse such employees for those contributions, and that Ansaldo subsequently reimbursed its employees for \$3000 in contributions to the Committee.

12. The indictment also alleged that Besicorp provided the Committee with use of its facilities and resources in that a) the finance operation of the Hinchey campaign was conducted, in part, out of Besicorp's corporate headquarters; b) meetings of the Hinchey campaign finance committee were regularly conducted at a conference room in Besicorp's headquarters; c) phone and mail solicitations to the Hinchey campaign were organized and carried on from Besicorp's headquarters; d) contributions to the Hinchey campaign were regularly received, tabulated and recorded at Besicorp's headquarters; and e) from July through November 1992, a number of Besicorp employees devoted a significant portion of their normal work day to work on the Hinchey campaign.

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13. On June 19, 1997, Michael Zinn and Besicorp pleaded guilty to one count of aiding and abetting the making of false statements to the Commission. As part of the plea agreement, Besicorp and Zinn agreed not to contest any of the allegations in the May 15, 1997 indictment.

14. As of at least June 19, 1997, the Committee had knowledge that it had received \$27,000 in illegal contributions from Besicorp.

15. On April 8, 1998, the Committee sent the U.S. Treasury a check for \$27,000 to disgorge the amount that had been illegally contributed to it in 1992 by Besicorp.

16. The Committee has never returned or disgorged any of the \$3000 in 1992 contributions it received from the three individuals who acted as "straw donors" for Ansaldo.

17. The Committee did not reimburse Besicorp for the use of its facilities and the time that Besicorp employees spent on fundraising activities.

V. The following violations of the Act and the Commission's regulations occurred:

1. Friends of Maurice Hinchey and Frank Koenig, as treasurer, violated 2 U.S.C. §§ 441b, 441f, and 11 C.F.R. § 103.3(b)(2) by failing to refund the contributions from Ansaldo and Besicorp within thirty days of learning that they were corporate contributions, and contributions made in the name of another.

2. Friends of Maurice Hinchey and Frank Koenig, as treasurer, violated 2 U.S.C. § 441b by accepting illegal corporate in-kind contributions from Besicorp and Michael F. Zinn, its President and CEO.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of \$17,000.00 pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondents will refund \$3,000.00 to Ansaldo North America, Inc.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondents shall have no more than 90 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner ^{by SLL} 1/12/01
Lois G. Lerner
Associate General Counsel
Date

FOR THE RESPONDENTS:

David Lenefsky 12/18/2000
(Name) David Lenefsky
(Position) Attorney
Friends of Maurice Hinchey
Date

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